

EXHIBIT E

Declaration of Cheryl Roberts, Director of the Department of Medical Assistance Services

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

THE STATE OF TENNESSEE, et al.,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity
as Secretary of the United States Department
of Health and Human Services, et al.,

Defendants.

Case No. 1:24-cv-161-LG-BWR

DECLARATION OF CHERYL ROBERTS

Pursuant to 28 U.S.C. § 1746, I, Cheryl Roberts, duly affirm under penalty of perjury as follows:

1. I am over 18 years of age, have personal knowledge of the matters set forth herein, and am competent to make this Declaration.

2. I serve as the Director of the Department of Medical Assistance Services (DMAS). DMAS is responsible for administering Virginia's Medicaid program, and the State's Children's Health Insurance Program ("CHIP" or "FAMIS"). These programs are collectively referred to as "Cardinal Care".

3. As Director, I am responsible for the management of DMAS and its programs, which includes ensuring compliance with state and federal anti-discrimination laws. That comprises overseeing the teams that review and evaluate rules and regulations promulgated by federal agencies, including the U.S. Department of Health and Human Services ("HHS"), to

determine whether they necessitate policy changes. And where such changes are necessary—either because Cardinal Care does not have a policy required by the regulation or has a conflicting policy—I am ultimately responsible for executing a plan for bringing Cardinal Care into compliance.

4. DMAS’s mission is to improve the lives of Virginians through access to high-quality health care coverage and services. DMAS staff work to accomplish this mission through contracts with managed care organizations, an extensive network of providers, and collaboration with stakeholders and community partners.

5. Cardinal Care currently serves about 2 million Virginians, including low-income individuals, pregnant women, children, caretaker relatives of young children and older adults and adults with disabilities. As of May 15, 2024, approximately 787,000 children and 784,000 non-elderly adults were enrolled in Cardinal Care.

6. Cardinal Care is budgeted to receive approximately \$15.6 billion in total federal funding in State Fiscal Year 2024-2025.

7. HHS has promulgated new regulations interpreting Section 1557 of the Affordable Care Act’s prohibition on discrimination “on the basis of sex” to include “gender identity” and other “sex characteristics.” Nondiscrimination in Health Programs and Activities, 89 Fed. Reg. 37,522 (May 6, 2024) (“2024 Rule”).

8. Cardinal Care does not provide coverage for gender reassignment surgery for individuals under the age of 18. Further, Cardinal Care only covers hormone replacement therapy for Gender Dysphoria for individuals under the age of 18 if parental consent is obtained (Gender Dysphoria is defined using the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition – DSM-5).

9. If the 2024 Rule requires state Medicaid programs and other health insurance plans to cover gender reassignment surgeries and hormone replacement therapies for individuals under the age of 18, Virginia risks losing significant federal funding for the Cardinal Care program that supports 2 million Virginians.

10. Mitigating this risk of losing federal funding would require Cardinal Care to come into compliance with the 2024 Rule by covering these services, but DMAS lacks the authority to unilaterally do so.

11. The Virginia Appropriation Act prohibits DMAS from making changes to the Cardinal Care program that have a material fiscal impact on the state general fund (Chapter 2, Acts of Assembly of 2024, Special Session I, Part I, Item 288.E). The interpretation of this statute in Virginia is that any fiscal impact is deemed material, and therefore requires additional appropriation authority by the General Assembly.

12. The Virginia Appropriation Act further restricts any state agency, including DMAS, from making program changes that would alter the cost of benefits without the General Assembly appropriating funds for the cost of those changes (Chapter 2, Acts of Assembly of 2024, Special Session I, Part IV, Item 4-5.03(a)).


CHERYL ROBERTS

Dated: June 12, 2024